

# POMERANTZ LLP

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Partner

November 15, 2022

The Honorable Eric N. Vitaliano  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *In re Northern Dynasty Minerals Ltd. Securities Litigation*  
Case No. 1:20-cv-05917-ENV-RLM

Dear Judge Vitaliano,

We represent Lead Plaintiff Lawrence Kelemen and Named Plaintiff Charles Hymowitz (collectively, “Plaintiffs”) and write to notify the Court of recent developments in the above-captioned action. On October 28, 2022, the U.S. House Transportation & Infrastructure Committee released a report following an investigation of the Pebble project that is the crux of the complaint in this action, making the following “disturbing findings”:

- Since at least early 2019, Pebble LP planned to build a mine with a lifespan longer than 20 years.
- Pebble LP’s former CEO Tom Collier lied to Congress when he testified at a hearing before the Subcommittee on Water Resources and Environment that Pebble LP had “no current plans, in this application or in any other way, for expansion” of the mine beyond 20 years—this was likely criminal conduct.
- Pebble LP deliberately sought to mislead regulators regarding the mine’s planned scope in order to avoid more robust environmental and public review processes.

See The House Committee on Transportation and Infrastructure, NO CURRENT PLANS . . . Pebble LP, Sham Permitting, and False Testimony Threatening the World’s Largest Salmon Habitat.<sup>1</sup>

These and other findings were based on Pebble’s *own records* “related to the intended, anticipated, or potential length, capacity, size, or scope of the Pebble Mine.” *Id.* at 13. The report

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<sup>1</sup><https://transportation.house.gov/imo/media/doc/TI%20Committee%20Pebble%20Mine%20Report%20and%20Appendix%201.pdf>.

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underscored that “[o]f all the documents produced by Pebble LP and the Corps, it is the internal emails authored or received by Mr. Collier and Mr. Thiessen that prove most damaging and provide deeply concerning insight into the true intentions of those wanting to develop Pebble Mine.” *Id.* at 13-14.<sup>2</sup>

According to the report, “a review of internal communications and documents from 2019 demonstrate that testimony offered by Mr. Collier to the subcommittee was not truthful.” *Id.* at 14. “In a glaring example, in the same week that Mr. Collier told the subcommittee that Pebble LP had no plans for expansion beyond a 20 year mine, he and other members of Pebble LP leadership, including Mr. Thiessen, pitched a much longer-term Pebble Mine to [private] investors.” *Id.* at 14. “In a presentation slide deck circulated internally at Pebble LP and shared with [private] investors in late October 2019, Pebble LP officials were pitching ‘Development Alternatives.’” *Id.* “In an email between Northern Dynasty officials requesting the slide deck, Mr. Collier is specifically mentioned as one of the Pebble LP leaders ‘sitting down’ with possible investors to make the pitch in Melbourne, Australia.” *Id.*

According to the report, “[t]he slide deck described the 20-year Pebble Mine plan then moving through the federal permitting process and labeled that plan the ‘Permitting Case.’” *Id.* “The presentation explained the Permitting Case was a ‘Smaller Project’ created by Pebble LP, ‘to respond to public concerns.’” *Id.* “The other ‘Alternative Plans’ presented in the slide deck described massively expanded mining operations.” *Id.* at 15. “Specifically, the alternatives included three plans that went significantly beyond what Mr. Collier shared with the subcommittee during his written and oral testimony when he explained that Pebble LP had no current plans for expansion.” *Id.* “The plans were titled the ‘Transition Alternative,’ the ‘Expanded Alternative,’ and the ‘Ultimate Pit Alternative.’” *Id.* As the report noted, “these plans were not expansions of the Pebble Mine to be considered after the 20-year permitted mining operations had elapsed, but rather expansions to occur *as early as three years* from the initial operation of the Pebble Mine.” *Id.* (emphasis in original).

These grave findings are consistent with the allegations in the complaint, which more than adequately pleads that defendants made false and misleading statements to the public with scienter. In the event that the Court is inclined to dismiss the complaint, Plaintiffs respectfully request leave to amend in order to add the House Committee’s findings.

Respectfully submitted,

/s/ Emma Gilmore  
Emma Gilmore

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<sup>2</sup> Messrs. Collier and Thiessen are defendants in this action.